

KATHLEEN CHAPMAN

IBLA 87-815

Decided June 12, 1990

Appeal from a decision of the Eastern States Office, Bureau of Land Management, cancelling a Private Maintenance and Care Agreement for a wild horse identified by Freeze Mark No. 81001647.

Affirmed.

1. Evidence: Sufficiency--Wild Free-Roaming Horses and Burros Act

BLM may properly cancel a Private Maintenance and Care Agreement for an adopted wild horse when there is sufficient evidence of improper care of the horse to establish that the adopter violated the terms of the Agreement.

APPEARANCES: Paul Whittaker Burbank, Esq., Rochester, New York, for appellant; Matthew C. Urie, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE BYRNES

Kathleen Chapman has appealed from a decision dated June 29, 1987, by the Director, Eastern States Office, Bureau of Land Management (BLM), cancelling her Private Care and Maintenance Agreement with BLM for a wild horse identified by Freeze Mark No. 81001647. Citing 43 CFR 4770.2(b), BLM stated that appellant had failed to "provide proper care and maintenance for the above horse."

BLM's Answer summarizes the evidence of record:

On June 4, 1987, Mr. Michael B. Mercier, purchaser of the Chapman property at a foreclosure sale, and his sister, Shelly Reding, visited the property and discovered three horses stabled in a converted two-car garage. Local law enforcement authorities were notified and arrived at the property to investigate the condition of the horses. The responding officer observed that the horses were very thin, caked with mud and manure and their hair was matted. The officer also reported that there was no food or water in the stalls, and that an adjacent pasture had been

unused by the horses since it contained no observable hoof prints or droppings. An investigator for the local Humane Society was then called to the Chapman property. Investigator Nancy Jantzen (Jantzen) observed three "horses standing in mushy, wet manure up to their knees, horses legs caked with manure, 1 horse had manure hanging off his shoulders, all three horses were extremely thin and draught, no grain available for the horses, no water available for the horses, hair on the horses was severely matted from not being brushed." Jantzen then advised Ms. Chapman, who had arrived at the property, to clean the stalls before her return the next day. The next day, Jantzen arrived accompanied by veterinarian Dr. Robert Andre. The stalls had been cleaned and the horses fed and watered. However, upon examination, it was determined that the horses had been without food and proper care for some time and were extremely underweight. Dr. Andre further reported all three of the horses had been neglected and were "between 150 and 200 pounds underweight from not being fed properly and given proper care." Ms. Chapman was then arrested and given "an appearance ticket for cruelty to animals."

On June 8, 1987, Investigator Jantzen revisited the Chapman property and found that no bedding had been placed in the horses' stalls, the hay was wet and moldy and the horses' hair was still caked with manure. Dr. Andre, who was apprised of these conditions, apparently felt that the horses would not be properly cared for at the Chapman property. On June 9, 1987, the horses were removed from the Chapman property by local authorities and taken to the Humane Society.

(Answer at 1-2).

The accuracy of this summary is confirmed by documents in the case file, including the report of the investigating officer, the deposition of the attending veterinarian, and a memorandum of a telephone conversation indicating that the chief investigator for the Humane Society had informed BLM that one of the three horses removed from appellant's property was identified by Freeze Mark No. 81001647. The file also contains a photograph of the horse, taken by the investigating officer, which confirms the written observations made in the report.

In the statement of reasons, appellant asserts that she lost her property in a foreclosure sale but that on June 10, 1987, she arranged to board the horses at an equestrian center. Appellant does not challenge the adverse evidence of record except to say that it was hard to keep weight on the horse and that the horse had to be wormed often. She maintains that the horse was adequately cared for and that she would be willing to comply with all requirements of the Maintenance Agreement if the horse were restored to her.

[1] The Wild Free-Roaming Horses and Burros Act of 1971, as amended, 16 U.S.C. § 1333(b)(2)(B) (1982), authorizes the Secretary of the Interior to place wild horses with qualified applicants who can assure humane treatment and care. See 43 CFR Subpart 4750. Title to horses placed in private

care remains with the Government for a minimum of 1 year after placement and execution of the Agreement and until BLM issues a Certificate of Title. 16 U.S.C. § 1333(c) (1982); 43 CFR 4750.4 and .5. A Certificate of Title may only be issued after application by the adopter and approval by the proper BLM officer. 43 CFR 4750.5(a) and (b). Regulation 43 CFR 4760.1(a) requires the adopter to comply with the Agreement and the regulations. The Standard Agreement (Form 4710-9) at page 2 specifically prohibits "[t]reating a wild horse or burro inhumanely." Regulation 43 CFR 4700.0-5(f) defines "inhumane treatment" as "any intentional or negligent action or failure to act that causes stress, injury, or undue suffering to a wild horse or burro and is not compatible with animal husbandry practices accepted in the veterinary community." Failure to comply with the terms of the Agreement may result in its cancellation, repossession of the horse subject to it, and disapproval of subsequent requests to adopt additional wild horses or burros. 43 CFR 4770.2(b).

We conclude that BLM properly cancelled the Agreement and acquiesced in removal of the horse from appellant's property in accordance with 43 CFR 4700.0-5. In previous decisions, the Board has held that BLM, in deciding to cancel an Agreement and repossess a horse, "may rely upon an observed 'deteriorating condition of the animals themselves and \* \* \* the credible reports of third parties' in deciding to repossess the animals and cancel a maintenance Agreement during the first year." Mary Magera, 101 IBLA 116, 119 (1988), quoting Dennis Turnipseed, 66 IBLA 63, 67 (1982). Such an approach does not imply a finding that an adopter has been deliberately cruel. Mary Magera, supra; Kathryn E. Spring, 82 IBLA 26, 30 (1984). As applied in the instant case, it simply means that the condition of the horse, as well as the absence of feed and water, was found to reasonably justify its removal and the cancellation of the Agreement pursuant to 43 CFR 4700.0-5. See Grant F. Morey, 108 IBLA 354 (1989).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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James L. Byrnes  
Administrative Judge

I concur:

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R. W. Mullen  
Administrative Judge